

Upper Clark Fork River Basin Survey Summary
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While the Montana water adjudication process has been going on for 25 years, the Upper Clark Fork River Basin Steering Committee, concerned about its slow pace, is interested in gathering responses from surface water users in two sub-basins. The Upper Clark Fork River Basin Steering Committee conducted this surface water rights survey in two sub-basins of the upper Clark Fork. One is Flint Creek of Granite County which is an example of a basin with existing water right decrees. The other, without water decrees, is Blackfoot in Powell County.

Although the steering committee is aware of the problems that could arise post-adjudication such as the obligation of water commissioners to enforce single, unified water rights in a large basin, the committee believes that the completion of the water adjudication will add certainty and accuracy to administering and enforcing user water rights in Montana.

Listed below are the questions to the survey followed by a brief summary of the responses.

Results

Adjudication Questions from Survey

1. Do you hold a pre-1973 water right from the State of Montana?

The majority of respondents answered "yes." Two said "no".

2. What water uses are provided by your water rights?

Stockwater____ Irrigation____ Domestic____ Mining____ Other____.

The chief water uses in the basin include (in order of most use) irrigation, stockwater, and domestic.

There were zero responses to mining and other.

3. Have you or your representative participated in the statewide adjudication of water rights?

Sixteen responded "yes."

4. If the previous answer was yes, how have you participated? Filed a claim____ Hired an attorney

Filed an objection to a claim____ Testified in a hearing____ Other____.

The majority either filed a claim or filed an objection to a claim. Others hired an attorney, and a couple testified in a hearing.

5. What is the estimated cost of your participation in the adjudication process in time and dollars?

A few people said \$500 while other expenses were listed at \$60, \$100, \$600, \$800, \$1500, \$2000, \$3800, 5,000, \$100,000. Only a few responded to the time involved. Some of the hours listed were 25hrs, 40hrs, 80hrs.

6. Is your pre-1973 water right included in a water right decree issued by the Montana Water Court in the current state-wide adjudication process?

The majority responded “yes” that their pre-1973 water right was issued in a water right decree by the Montana Water Court.

7. On a scale of 1 to 10 with 1 meaning very dissatisfied and 10 meaning extremely satisfied, how would you rate the adjudication process?

Left blank: (8)/31=26%

1: (5)/31=16%

2: (5)/31=16%

3: (1)/31=3%

4: (3)/31=10%

5: (7)/31=23%

7: (2)/31=6%

Some said the adjudication process was non applicable.

There were zero responses from 8-10, suggesting that users are not extremely satisfied with the adjudication process.

8. Do you expect that completion of the adjudication will make your use of water?

The majority replied that the completion of the adjudication will make it harder.

9. How will completion of the adjudication affect your use of water?

One respondent said it would be easier because adjudication would “protect current water rights and document actual use prior to 1973.” Most said water adjudication would be harder for the following reasons:

*“Combining several decrees into one is not practical and not historical in use.”

*“More complicated, more expensive but more secure.”

*“More paperwork, wasted time, no help.”

*“Installation of measuring devices.”

*“Lose the use of some water.”

*“More bureaucratic, less collaboration with local users.”

Water Right Administration Questions

10. Is your water right regularly administered by a water commissioner?

The majority responded “no.”

11. The cost of a water commissioner is now borne proportionately by those water rights holders who receive water pursuant to the commissioner's actions. Would you support requiring all water rights holders in the decree that the commissioner is enforcing to help pay for the commissioner?

Thirteen answered "yes." Six said "no." Seven said "don't know."

12. Do you expect that enforcing your water right(s) will be easier or harder after the adjudication process is completed?

Fifteen answered that it would be harder after the adjudication process. Nine said it would be easier.

13. Should the DNRC be more active in enforcing water rights?

Eleven reported that the DNRC should be more active in enforcing water rights. Eight said "no." Eight said "don't know."

14. About how much time and money have you spent defending your water rights?

For the majority, there was zero cost in defending water rights.

Some mentioned the following costs and hours:

\$0 (10)
\$500 (2)
~\$1000(5)
\$2,000
\$12,000(2)
\$25,000
\$28,000
Over 100,000

Hrs 10

Hrs over 100

15. Do you feel that your water right is threatened by interests in Montana?

The majority feels their water right is threatened by interests in Montana and in downstream states.

16. Do you have any other comments or concerns about the adjudication process or how water rights are currently administered?

*"Local process is not contentious now. Will it be after the adjudication?"

*"development pressure is not legally available water."

*"adjudication process is a tax on water for which I have a legal right, and this confirms that the DNRC is not doing its job. Why would adjudication be necessary had DNRC already kept its files current and accurate?"

*"concerned about losing my local control."

*“water rights now is administered appropriately. A new adjudication will complete upheaval of system. Too complicated and too large of an area to administer.”

*“get it done once and for all.”

*“[from my personal experience] water rights ran through the courts twice. [I] see no need to go through courts again.”

*“new decrees will be a huge unknown to most of us. There will be more and more pressure on current water users due to changes in population and land use.”

*“hiring more people and spending more money on this process in all likelihood will create a bigger mess than we are already in. If recent history is any indication of what we right holders are facing, God help us.”

*“original decree dates should be considered. [For example,] Flint Creek was decreed in 1906. Lower flint Creek in 1909. Lower valley users with prior rights could have appeared in court in 1906 but chose not to. Therefore, their priority dates should not prevail over later dates decreed in 1906.”

*“the water rights are better administered by the District Courts than by any bureaucratic arm of the government such as the DNRC.”

*“it’s working now why change it? It appears the ‘new process’ is going to be an attorney’s ‘heyday’ and give several more jobs. Someone will have to pay for them.”

*“I question what has been done with our adjudication tax. We were told that action would take place in fall 2005. To date nothing has happened. Is our money being misused?”

*“my concern is that if the irrigation is changed any with a new decree the entire system will fail, as it has worked fairly well for 100 years plus.”

*“DNRC doesn’t seem to do much as it is. So it is hard to assess the benefit of an expanded role.”

*“[the] system appears to be manipulated by certain moneyed special interest groups [which is] a conflict of interest [between] government and special interest groups.”

*“it’s a joke.”

*“DNRC will not enforce without an attorney raising hell. [It] should not be this way.”

*“Water rights are currently administered on a local level with separate and historical decrees. The committee should do everything it can to see that this stays the same. The Brute Force approach with a drainage wide single decree will not work in the best interest of the little guys.”